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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT JOSEPH LUMPKIN,

11 Plaintiff,

12 v.

13 DICROSE, et al.,

14 Defendants.

CASE NO. C21-0032JLR

ORDER

15 Before the court is the Report and Recommendation filed by Magistrate Judge J.
16 Richard Creatura (R&R (Dkt. # 9)) and the objections thereto filed by *pro se* Plaintiff
17 Robert Joseph Lumpkin (Obj. (Dkt. # 11)). Magistrate Judge Creatura recommends that
18 the court (1) dismiss Mr. Lumpkin's 42 U.S.C. § 1983 civil rights complaint, without
19 prejudice, based on a motion to dismiss that Mr. Lumpkin filed on January 26, 2021 (*see*
20 MTD (Dkt. # 6)) and (2) deny Mr. Lumpkin's application for leave to proceed *in forma*
21 *pauperis* (IFP App. (Dkt. # 4)) as moot. (*See generally* R&R.)
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1 In his objections, Mr. Lumpkin asks the court to strike his prior motion to
2 voluntarily dismiss his lawsuit. (*See* Obj. at 1.) He states that when he filed his motion
3 to dismiss, he was suffering from medical issues that have since been resolved through
4 medical treatment. (*See id.*) He represents that he is now able to proceed with his
5 lawsuit. (*Id.*) Mr. Lumpkin has also filed a new application to proceed *in forma*
6 *pauperis*. (2d IFP App. (Dkt. # 11-1).)

7 Mindful of its obligation to liberally construe a *pro se* plaintiff's pleadings, the
8 court construes Mr. Lumpkin's objections as a notice of withdrawal of his January 26,
9 2021 motion to dismiss. Accordingly, the court ADOPTS in part Magistrate Judge
10 Creatura's report and recommendation (Dkt. # 9). Specifically, the court ADOPTS
11 Magistrate Judge Creatura's recommendation to deny Mr. Lumpkin's first application for
12 leave to proceed *in forma pauperis* (Dkt. # 4) as moot. The court, however, declines to
13 adopt Magistrate Judge Creatura's report and recommendation to the extent that it
14 recommends dismissal of Mr. Lumpkin's complaint. The Clerk is directed to note on the
15 docket that Mr. Lumpkin has withdrawn his motion to dismiss (Dkt. # 6).

16 Though Mr. Lumpkin has now filed a second application for leave to proceed *in*
17 *forma pauperis* (Dkt. # 11-1), that application is deficient because Mr. Lumpkin failed to
18 submit with his application a copy of his inmate trust fund account statement. This action
19 cannot proceed further until Mr. Lumpkin corrects this deficiency. Mr. Lumpkin is
20 therefore directed to submit a certified copy of his prison trust account statement to the

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1 court within **thirty (30) days** of the filing date of this Order and is advised that his failure
2 to timely comply with this directive may once again result in dismissal of this action.

3 Dated this 1st day of April, 2021.

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6 JAMES L. ROBART
7 United States District Judge
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